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8 *Attorneys for Plaintiff*
PINKBERRY, INC.

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 PINKBERRY, INC., a California
13 corporation,

14 Plaintiff,

15 vs.

16 MONKEE'S TERIYAKI, INC, a
California Corporation, d/b/a MONKEE
17 EXPRESS, YONGHEE KIM, an
individual, and DOES 1 to 10, inclusive,

18 Defendant.
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CV 08-05924 VBF (JCx)

Case No.

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR:**

1. **FEDERAL TRADEMARK
INFRINGEMENT;**
2. **FEDERAL UNFAIR
COMPETITION;**
3. **FEDERAL FALSE
DESIGNATION OF ORIGIN;**
4. **STATE UNFAIR COMPETITION;**
5. **STATE INJURY TO BUSINESS
REPUTATION; AND**
6. **UNJUST ENRICHMENT**

FILED
2008 SEP 10 PM 2:56
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES
BY _____

1 Plaintiff Pinkberry, Inc. ("Pinkberry") for its Complaint against Defendants
2 Monkee Teriyaki, Inc. d/b/a Monkee Express ("Monkee"), Yonghee Kim, and DOE
3 defendants (collectively, "Defendants"), alleges as follows:
4

5 JURISDICTION AND VENUE

6 1. This is a complaint for injunctive relief and damages based on trademark
7 infringement, unfair competition, and false designation of origin under 15 U.S.C.
8 Section 1051 *et seq.*, as amended (hereinafter "Lanham Act"), as well as related state
9 law claims.

10 2. This Court has subject matter jurisdiction over this action under the
11 Lanham Act, 15 U.S.C. § 1121; 28 U.S.C. § 1338(a) (any act of Congress relating to
12 patents, copyrights and trademarks); and the doctrines of ancillary and pendent
13 jurisdiction.

14 3. This Court has personal jurisdiction over Defendants because they
15 maintain their place of business and conduct business in the State of California.

16 4. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) and (3)
17 because a substantial part of the events giving rise to the claims occurred in this
18 district, a substantial part of the property that is the subject of the action is situated in
19 this district, and Defendants were and are subject to personal jurisdiction in this
20 district at the time the action was commenced.
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22

23 PARTIES

24 5. Pinkberry is, and at all times relevant hereto has been, a corporation
25 organized and existing under the laws of the State of California, having a place of
26 business at 6310 San Vicente Boulevard, Suite 100, Los Angeles, California 90048.
27 Pinkberry's primary line of business is the sale of frozen yogurt with optional
28 toppings that include, among other things, fresh fruit, cereals and nuts (the "Pinkberry

1 Products”) under the distinctive Pinkberry branding. Pinkberry operates stores
2 throughout Los Angeles and elsewhere within this district as well as in interstate
3 commerce.

4 6. On information and belief, Monkee is, and at all times relevant hereto has
5 been, a California Corporation, having a place of business at 1801 Ocean Front Walk,
6 Venice, California. On information and belief, Monkee’s primary line of business is
7 restaurant services.

8 7. Defendant Yonghee Kim is an individual, who on information and belief,
9 is at all times relevant hereto a resident within the venue of the Central District of
10 California. On information and belief, Yonghee Kim is an officer, owner, and/or
11 registered agent of Monkee.

12 8. The true names and capacities, whether individual, corporate, associate,
13 or otherwise of Defendants sued herein as DOES 1 through 10, inclusive, are
14 unknown to Pinkberry at the present time, and Pinkberry therefore sues said
15 Defendants by such fictitious names. Pinkberry is currently unable to ascertain such
16 Defendants’ real names because information as to the owners, investors, partners,
17 members and/or franchisees is not publicly available. Pinkberry, after obtaining leave
18 of Court, if necessary, will amend this Complaint to show such true names and
19 capacities, and any additional factual allegations, when the same have been
20 ascertained.

21 9. On information and belief, at all times relevant to the allegations in the
22 Complaint, each Defendant was the owner, agent, employee, servant, partner and/or
23 co-conspirator of each of the other Defendants and/or is in some other manner legally
24 liable for the conduct and damages at issue in this action and was acting within the
25 course and scope of one or more of such relationships and with the direct or implied
26 knowledge, consent, and/or ratification of each of the other Defendants.

27 10. Defendants’ primary line of business is restaurant services that offer,
28 among other things, the sale of frozen yogurt with optional toppings, which

deliberately imitates Pinkberry's highly distinctive branding.

SUMMARY OVERVIEW OF COMPLAINT

11. Much the way that Apple Computers revolutionized the computer industry, raising the design standards and operating systems of the previously staid "beige box" computer market, Pinkberry has revolutionized the yogurt business by offering a product selection and consumer experience that are uniquely Pinkberry. Since its opening, Pinkberry has been featured in numerous national publications such as Time, Fortune, Los Angeles Times, New York Times, and Reuters, and has been the subject of countless internet blogs. See, true and correct copies of a sampling of articles discussing Pinkberry attached hereto as **Exhibit "A"** and incorporated by reference. These national publications have recognized the unique and highly distinctive look and feel of Pinkberry stores, noting, for example, that Pinkberry was responsible for "help[ing to] revive the sagging frozen yogurt industry"¹ and "develop[ing] a look that helped create a cult factor."² Among many of its other acclaims and accolades, *The Los Angeles Times* has called Pinkberry "a phenomenon, creating four-times-a-week addicts and spawning celebrity devotion, along with a chorus of imitators..."³ More recently, *The Los Angeles Times* opinion section made the tongue-in-cheek suggestion that the Los Angeles Coliseum should be renamed "Pinkberry Coliseum."⁴ Indeed, Pinkberry's popularity, success, and fame in the yogurt business are unparalleled. Pinkberry was even showcased in an American Express national television advertisement. See true and correct copies of the American Express television advertisement stills, attached hereto as **Exhibit "B"** and

¹ Hwang & Lee, *Simple by Design*, TIME MAGAZINE, March 12, 2008.

² Boyle, *Starbucks Founder Bites Into Pinkberry*, FORTUNE, October 16, 2007.

³ Menn, *Welcome Jolt for Pinkberry*, LOS ANGELES TIMES, October 16, 2007.

⁴ Zirin, *The Pinkberry Coliseum*, LOS ANGELES TIMES, June 29, 2008.

1 incorporated by reference.

2 12. Pinkberry's success has been noted by its competitors and would-be
3 competitors, including Defendants. On information and belief, Defendants'
4 "Coolberry" branding is a deliberate imitation of the Pinkberry branding and was
5 implemented to build market share and a customer base by exploiting Pinkberry's
6 renowned trade name and trademarks and wrongfully trading upon Pinkberry's
7 reputation and goodwill.

8 13. Defendants have sought to profit from Pinkberry's success by using their
9 highly similar COOLBERRY trademarks (the "COOLBERRY Marks") to market and
10 sell products that are identical or nearly identical to the Pinkberry Products, thereby
11 infringing upon Pinkberry's registered trademarks, service marks, and trade name
12 (collectively, the "PINKBERRY Marks").

13 14. Defendants' wrongful acts create a likelihood of confusion in the minds
14 of consumers as to the sponsorship, endorsement, association, or approval of
15 Defendants' "Coolberry" products by Pinkberry. Accordingly, Pinkberry has been
16 and continues to be damaged by Defendants' infringing activities, necessitating this
17 lawsuit.

18
19 **ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

20 **A. Pinkberry's Creation And First Use Of Its PINKBERRY Trademarks,**
21 **Service Marks, And Trade Name**

22 15. Commencing in or about January of 2005, Pinkberry created, developed
23 and began marketing and selling the Pinkberry Products through its distinctive
24 Pinkberry restaurants.

25 16. Since approximately January of 2005, Pinkberry has been using and is
26 currently using its PINKBERRY Marks in connection with the marketing and sale of
27 the Pinkberry Products, restaurants and related products and services. Pinkberry owns
28 all rights in and to the federal registrations for the following PINKBERRY Marks,

each of which is valid and subsisting:

<u>TRADEMARK</u>	<u>REG. NO.</u>	<u>ISSUE DATE</u>	<u>GOODS AND SERVICES</u>
PINKBERRY	3,302,143	October 2, 2007	Frozen yogurt; frozen yogurt based dessert, combined with fruit, nuts, cereal and shaved ice and rice cakes; and smoothies
PINKBERRY	3,460,697	July 8, 2008	Restaurant services; restaurants; take-out restaurant services, café-restaurants; fast-food restaurants
Stylized Leaf and Berry Swirl Design	3,461,027	July 8, 2008	Express restaurant services, food kiosk services, and carry-out restaurant services featuring frozen yogurt-based desserts, frozen dairy desserts, smoothies and shaved ice
PINKBERRY & Stylized Leaf and Berry Swirl Design	3,460,702	July 8, 2008	Restaurant services; restaurants; take-out restaurant services; café-restaurants; fast-food restaurants

See, true and correct copies of those registrations attached hereto as **Exhibits "C"** through **"F"** and incorporated by reference.

17. Since Pinkberry opened its first restaurant in the United States in or about January of 2005, its Pinkberry Products, restaurants and related products and services have prominently featured the PINKBERRY Marks to identify them and to identify Pinkberry as their source.

18. Pinkberry has expended substantial time, money, and effort in promoting its Pinkberry Products, restaurants and related products and services through the use of its PINKBERRY Marks and in enforcing its rights in its PINKBERRY Marks throughout the United States.

19. By virtue of Pinkberry's investments, the PINKBERRY Marks have become associated in the minds of consumers and in the minds of the general public

1 with Pinkberry and have become assets of substantial value to Pinkberry and symbols
2 of its quality products and valuable goodwill. As a result of its efforts and success, in
3 less than three (3) years, Pinkberry has expanded from one location in West
4 Hollywood, California to over 60 locations in the United States, with current plans to
5 continue to expand nationally and to enter international markets.

6 20. Since January 2005, the Pinkberry Products, restaurants and related
7 products and services, as identified by the PINKBERRY Marks, have been widely
8 used and recognized in the United States. *See e.g. Hwang & Lee, Simple by Design,*
9 *TIME MAGAZINE*, March 12, 2008 (describing Pinkberry's successes) and other articles
10 attached hereto as **Exhibit "A"** and incorporated by reference.

11 12 **B. Defendants' Unlawful Conduct**

13 21. On information and belief, since about June 2008, Defendants have
14 operated a restaurant in which they sell, among other things, frozen yogurt with
15 optional toppings under the COOLBERRY Marks, which deliberately imitate
16 Pinkberry's highly distinctive branding. *See* true and correct copies of Defendants'
17 COOLBERRY Marks attached hereto as **Exhibit "G"** and incorporated by reference.

18 22. Defendants' use of the COOLBERRY Marks in the promotion,
19 advertising and sale of directly competitive frozen yogurt products and services,
20 constitutes the use in commerce of colorable imitations, copies and reproductions of
21 the PINKBERRY Marks, is deceptively and confusingly similar to Pinkberry's use of
22 the PINKBERRY Marks for identical products, and is likely to cause confusion,
23 mistake, or deception in the minds of the public.

24 23. Pinkberry has not consented to, sponsored, endorsed, or approved
25 Defendants' use of the PINKBERRY Marks in connection with any of Defendants'
26 products or services.

27 24. Defendants' acts of improper use and promotion of the PINKBERRY
28 Marks are likely to cause confusion or mistake in the minds of consumers as to the

1 sponsorship, endorsement, association, or approval of Defendants' products and
2 services by Pinkberry. Likelihood of confusion is and will only be exacerbated by the
3 fact that Defendants' products and services are directly competitive with and/or highly
4 related to the Pinkberry Products and Pinkberry's services. Defendants' and the
5 Pinkberry Products are likely to be purchased by the same types of consumers,
6 advertised and promoted in the same and/or similar advertising channels, and
7 marketed and sold in similar retail establishments.

8 25. Defendants also used and altered a banner bearing the PINKBERRY
9 Marks (the "Banner") to promote, advertise and sell Defendants' products.
10 Specifically, Defendants covered and replaced "PINK" on the Banner with "COOL"
11 in the same stylized font and color to create a COOLBERRY banner that was posted
12 and displayed on Defendants' restaurant door. See true and correct copies of
13 Defendants' COOLBERRY Marks attached hereto as **Exhibit "G"** and incorporated
14 by reference.

15 26. On information and belief, Defendants' foregoing acts are willful,
16 knowing, deliberate, intentional, and in utter disregard of Pinkberry's rights.

17 27. Defendants' unlawful activity results in irreparable harm and injury to
18 Pinkberry. Among other harms, it deprives Pinkberry of its absolute right to
19 determine the manner in which its image is presented to the general public through its
20 products and services; deceives the public as to the origin and sponsorship of such
21 products and services; wrongfully trades upon, and cashes in on, Pinkberry's
22 reputation and exclusive rights in its trademarks; and irreparably harms and injures
23 Pinkberry's business reputation. As a direct and proximate result of Defendants'
24 conduct set forth above, Pinkberry has been injured and damaged in an amount to be
25 proven.

26 28. Defendants' conduct is continuing, and will continue, unless enjoined by
27 the Court.

28 29. Unless Defendants are enjoined from engaging in the infringing conduct

1 described above, Pinkberry will suffer irreparable injury and further damage. Thus, it
2 would be difficult to ascertain the amount of compensation which could afford
3 Pinkberry adequate relief for the acts of Defendants present and threatened, and
4 Pinkberry's remedy at law is not adequate to compensate for said harm and damage.

5
6 **FIRST CLAIM FOR RELIEF**

7 **TRADEMARK INFRINGEMENT**

8 **UNDER 15 U.S.C. § 1114 [LANHAM ACT § 32]**

9 **(Against All Defendants)**

10 30. Pinkberry repeats paragraphs 1 through 29, inclusive, and by this
11 reference incorporates those paragraphs herein as if set forth in full.

12 31. Pinkberry has used its PINKBERRY Marks in connection with, and to
13 identify the source of the Pinkberry Products and to distinguish those products from
14 similar products offered by other companies, by, and without limitation, prominently
15 displaying the PINKBERRY Marks on Pinkberry's storefronts, employees' uniforms,
16 cups, to-go containers and bags, and advertising and promotional materials distributed
17 throughout the United States, including, without limitation, on its website:
18 www.pinkberry.com.

19 32. Defendants' use of the COOLBERRY Marks in connection with the
20 advertising, promotion and sale of directly competitive products and services infringes
21 Pinkberry's registered PINKBERRY Marks and is likely to cause confusion, mistake,
22 or deception of the public as to the identity, source and/or sponsorship of Defendants'
23 "Coolberry" products and services.

24 33. Defendants' use of the COOLBERRY Marks has been made
25 notwithstanding Pinkberry's well-known and prior-established rights in the
26 PINKBERRY Marks and with both actual and constructive notice of Pinkberry's
27 federal trademark registrations and rights under 15 U.S.C. § 1072.

28 34. On information and belief, Defendants have intentionally adopted and

1 continued to use the COOLBERRY Marks with the intent and result of causing
2 confusion, mistake, or deception of the public as to the identity and source of
3 Defendants' products, restaurants and services.

4 35. The above acts by Defendants constitute trademark infringement. By
5 reason of the foregoing, Defendants have violated and will continue to violate Section
6 32(1) of the Lanham Act, 15 U.S.C. § 1114(1), unless enjoined by the Court.

7 36. Defendants' infringing activities have caused, and unless enjoined by this
8 Court, will continue to cause substantial, immediate, and irreparable injury and other
9 damage to Pinkberry's business, reputation and goodwill.

10 37. Pinkberry has no adequate remedy at law unless Defendants' infringing
11 conduct is enjoined by this Court.

12 **SECOND CLAIM FOR RELIEF**

13 **UNFAIR COMPETITION**

14 **UNDER 15 U.S.C. § 1125(a) [LANHAM ACT § 43(a)]**

15 **(Against All Defendants)**

16 38. Pinkberry repeats paragraphs 1 through 37, inclusive, and by this
17 reference incorporates those paragraphs herein as if set forth in full.

18 39. Defendants' improper use of the COOLBERRY Marks in connection
19 with the advertising, promotion and sale of directly competitive products and services
20 constitutes unfair competition under 15 U.S.C. § 1125(a).

21 40. Defendants' use of the COOLBERRY Marks is likely to cause confusion,
22 mistake, or deception among consumers as to whether Defendants are affiliated,
23 connected or associated with Pinkberry, and as to whether Pinkberry is the source of
24 Defendants' products and commercial activities or has sponsored or approved them.

25 41. Defendants' unfair competition has caused and will continue to cause
26 irreparable injury and other damage to Pinkberry's business, reputation and goodwill
27 in its PINKBERRY Marks for which Pinkberry has no adequate remedy at law.
28

THIRD CLAIM FOR RELIEF

FALSE DESIGNATION OF ORIGIN

UNDER 15 U.S.C. § 1125(a) [LANHAM ACT § 43(a)]

(Against All Defendants)

42. Pinkberry repeats paragraphs 1 through 41, inclusive, and by this reference incorporates those paragraphs herein as if set forth in full.

43. Defendants' COOLBERRY Marks are such colorable imitations and copies of the PINKBERRY Marks that Defendants' use thereof in connection with directly competitive products and services is likely to cause confusion, mistake, or deception as to whether Defendants are affiliated, connected, or associated with Pinkberry, and as to whether Pinkberry is the source of Defendants' products, services, or commercial activities or has sponsored or approved them.

44. Defendants' use of the COOLBERRY Marks is a false designation of the origin of Defendants' products, services or commercial activities and/or a false or misleading representation concerning such products, services or commercial activities under 15 U.S.C. § 1125(a).

45. As a direct and proximate result of the violations identified herein, Pinkberry has been injured in its business and property. Pinkberry has suffered damages in an amount to be proven at trial.

FOURTH CLAIM FOR RELIEF

UNFAIR COMPETITION

UNDER CALIFORNIA BUSINESS AND PROFESSIONS CODE

§ 17200 *et seq.*

(Against All Defendants)

46. Pinkberry repeats paragraphs 1 through 45, inclusive, and by this reference incorporates those paragraphs herein as if set forth in full.

47. Defendants' activities as stated herein constitute unfair competition and

1 infringement of Pinkberry's common law trademark rights in the PINKBERRY Marks
2 in the State of California.

3 48. Pursuant to California Business and Professions Code § 17203, Pinkberry
4 is entitled to preliminary and permanent injunctive relief ordering Defendants to cease
5 this unfair competition, as well as disgorgement of all of Defendants' profits
6 associated with this unfair competition.

7
8 **FIFTH CLAIM FOR RELIEF**
9 **INJURY TO BUSINESS REPUTATION**
10 **CALIFORNIA COMMON LAW**
11 **(Against All Defendants)**

12 49. Pinkberry repeats paragraphs 1 through 48, inclusive, and by this
13 reference incorporates those paragraphs herein as if set forth in full.

14 50. Defendants' use of the COOLBERRY Marks injures and creates
15 likelihood of injury to Pinkberry's business reputation because persons encountering
16 Defendants' products and services will be misled into believing that Pinkberry is
17 affiliated with or related to Defendants, and any adverse reaction by the public to
18 Defendants, the quality of Defendants' products, or the nature of their business will
19 injure the business reputation of Pinkberry and the goodwill that Pinkberry has
20 enjoyed and enjoys in connection with its PINKBERRY Marks.

21
22 **SIXTH CLAIM FOR RELIEF**
23 **UNJUST ENRICHMENT**
24 **(Against All Defendants)**

25 51. Pinkberry repeats paragraphs 1 through 50, inclusive, and by this
26 reference incorporates those paragraphs herein as if set forth in full.

27 52. As a result of their conduct, Defendants have been unjustly enriched at
28 the expense of Pinkberry and the law thereby implies a contract by which Defendants

1 must pay to Pinkberry the amount by which, in equity and good conscience,
2 Defendants have been unjustly enriched at Pinkberry's expense.

3
4 **WHEREFORE**, Pinkberry seeks judgment against Defendants as follows:

5 1. That Defendants and their agents, officers, servants, employees,
6 representatives, licensees, franchisees, successors, assigns, attorneys and all other
7 persons who are acting in concert or participation with any of them, and each of them,
8 be preliminarily and permanently enjoined from any further use of the COOLBERRY
9 Marks or any other trademark, trade name or other designation that is confusingly
10 similar to the PINKBERRY Marks;

11 2. That Defendants and their agents, officers, servants, employees,
12 representatives, licensees, franchisees, successors, assigns, attorneys and all other
13 persons who are acting in concert or participation with any of them, and each of them,
14 be preliminarily and permanently enjoined from any further acts of unfair competition
15 against Pinkberry;

16 3. That Defendants be required to file with the Court and serve on Pinkberry
17 within thirty (30) days after entry of the injunctions, a declaration under oath setting
18 forth in detail the manner and form in which Defendants have complied with the
19 injunctions;

20 4. That, pursuant to 15 U.S.C. § 1117, Defendants be held liable for all
21 damages suffered by Pinkberry resulting from the acts alleged herein;

22 5. That Pinkberry receive an award in the amount by which Defendants
23 have been unjustly enriched;

24 6. That, pursuant to 15 U.S.C. § 1117, Defendants be compelled to account
25 to Pinkberry for any and all profits derived by Defendants from their illegal acts
26 complained of herein;

27 7. That, pursuant to California Business and Professions Code § 17203,
28 Defendants be compelled to pay restitution and disgorge their ill-gotten gains;

1 8. That Defendants be ordered pursuant to 15 U.S.C. § 1118 to deliver up
2 for destruction all labels, signs, prints, packages, wrappers, receptacles, advertisement,
3 menus, banners, or the like in the possession or custody, or under the control of either
4 Defendant bearing any of the COOLBERRY Marks;

5 9. That the Court declare this action to be an exceptional case and award
6 Pinkberry its full costs and reasonable attorneys' fees pursuant to 15 U.S.C. § 1117;

7 10. That the Court grant Pinkberry any other remedy to which it may be
8 entitled as provided for in 15 U.S.C. §§ 1116 and 1117 and/or under state law;

9 11. For such other and further relief that the Court deems just and proper.

10
11 DATED: September 10, 2008

12 REED SMITH LLP

13
14 By 
15 Henry C. Wang
16 Attorneys for Plaintiff
17 PINKBERRY, INC.

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DOCSLA-15654913

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Valerie Baker Fairbank and the assigned discovery Magistrate Judge is Jacqueline Chooljian.

The case number on all documents filed with the Court should read as follows:

CV08 - 5924 VBF (JCx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====:

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

PINKBERRY, INC. and PINKBERRY
FRANCHISING COMPANY

PLAINTIFF(S)

v.

MONKEE'S TERIYAKI, INC., a California
Corporation, d/b/a MONKEE EXPRESS,
YONGHEE KIM, an individual and DOES
1-10, inclusive, DEFENDANT(S).

CASE NUMBER

CV08-05924 VBF (JCx)

SUMMONS

TO: DEFENDANT(S): MONKEE'S TERIYAKI, INC., a California Corporation, dba
MONKEE EXPRESS, Yonghee Kim, an individual

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Henry C. Wang, whose address is Reed Smith, LLP, 355 South Grand Avenue, Suite 2900, Los Angeles, CA 90071. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Dated: SEP 10 2008

Clerk, U.S. District Court

By: 

Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)
 PINKBERRY, INC. and PINKBERRY FRANCHISING COMPANY

(b) County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases): LOS Angeles, California

(c) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Henry C. Wang (SBN 196537)
 William R. Overend (SBN 180209)
 Reed Smith LLP
 355 South Grand Avenue, Suite 2900
 Los Angeles, CA 90071

DEFENDANTS

MONKEE'S TERIYAKI, INC., a California Corporation
 d/b/a MONKEY EXPRESS, YONGHEE KIM, an individual
 and DOES 1-10, inclusive

County of Residence of First Listed Defendant (In U.S. Plaintiff Cases Only): LOS Angeles, California

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
 (Place an X in one box for plaintiff and one for defendant.)

- | | | | | | |
|---|--------------------------------|--------------------------------|---|--------------------------------|--------------------------------|
| Citizen of This State | PTF <input type="checkbox"/> 1 | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN (Place an X in one box only.)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☐ Yes ☒ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☐ Yes ☐ No

MONEY DEMANDED IN COMPLAINT: \$ >\$75,000

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Federal Trademark Infringement (15 U.S.C. 1114); Federal Unfair Competition (15 U.S.C. 1125(a)); Federal False Designation of Origin (15 U.S.C. 11256(a)); State Unfair Competition (Cal. Bus. & Prof 17200); State Injury to Business Reputation; and Unjust Enrichment

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litig. <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609
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VIII(a). IDENTICAL CASES: Has this action been previously filed and dismissed, remanded or closed? ☒ No ☐ Yes
 If yes, list case number(s):

FOR OFFICE USE ONLY: Case Number: _____

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(b). RELATED CASES: Have any cases been previously filed that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: List the California County, or State if other than California, in which **EACH** named plaintiff resides (Use an additional sheet if necessary)

☐ Check here if the U.S. government, its agencies or employees is a named plaintiff.

Los Angeles

List the California County, or State if other than California, in which **EACH** named defendant resides. (Use an additional sheet if necessary).

☐ Check here if the U.S. government, its agencies or employees is a named defendant.

Los Angeles, Florida

List the California County, or State if other than California, in which **EACH** claim arose. (Use an additional sheet if necessary)

Note: In land condemnation cases, use the location of the tract of land involved.

Los Angeles

X. SIGNATURE OF ATTORNEY (OR PRO PER): _____ **Date** September 10, 2008

Henry C. Wang

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))